

MR. A. S. DAMODARAN ASAN (*Mqvelikara*): If anybody is going to misunderstand me, I would be sorry for him. (*Laughter.*)

DEPUTY PRESIDENT: Does the House agree to sit for some time more so that Mr. Kayalam Paramesvaran Pillai might introduce the other Bills?

The House agreed.

THE COURT OF WARDS BILL.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vaki*): Sir, I rise to introduce the Court of Wards Bill. It has been published with a statement of objects and reasons in the Government Gazette, and I move that it be read in Assembly.

MR. R. NILAKANTA PILLAI (*Financial Secretary to Government*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vaki*): Sir, the object of the Bill is to provide for the protection of the person and property of incapacitated persons such as minors and persons of unsound mind. A State agency called the 'Court of Wards' is proposed for the proper management of the property of the ward and for looking after his person. The Court will consist of a President and two other members. The Bill has been drawn on the lines of the Madras Court of Wards Act and the Cochin Court of Wards Regulation. I trust that the House will accept the principles.

DEPUTY PRESIDENT: Does the House accept the principles of the Bill?

The House accepted the principles of the Bill.

The Secretary then read the title of the Bill.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vaki*): Sir, I beg to move that the Bill be referred to a Select Committee consisting of

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| 1. The Deputy President. | 7. Messrs. S. Chattanatha |
| 2. Messrs. R. Sambasiva Iyer. | Karayalar. |
| 3. " Edavanatt S. Padmana- | 8. " M. Mahomed |
| bha Menon. | Haneef. |
| 4. " K. Sankaran. | 9. " A. Easwara Pillai |
| 5. " E. V. Krishna Pillai. | (Kalkulam). |
| 6. " Antony George. | 10. " S. Nilakanta |
| | Pillai. |

DEPUTY PRESIDENT: Does the House agree?

The House agreed.

DEPUTY PRESIDENT: The motion is carried. The Committee will submit its Report within four months.

THE TRAVANCORE IMPORTATION OF LIVE STOCK BILL.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I rise to introduce the Travancore Importation of Live Stock Bill which has been published in the Gazette with a statement of objects and reasons. I move the Bill be read in Assembly.

MR. R. NILAKANTA PILLAI (*Financial Secretary to Government*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The Bill is intended to prohibit the importation of diseased cattle into the State. I trust the House accepts the general principles.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): In supporting my friend I would only point out one aspect of the matter. The Bill, as at present framed, deals only with importation of live stock. They come to the State by trespass also. In such cases also, provision must be made in the Bill so that trespass of stray animals may also be brought under law.

MR. A. THANU PILLAI (*Trivandrum—Rural*): Does the member refer to cases where somebody harbours a cow or a horse which is prohibited to be brought into the State?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): This measure may be useful.

DEPUTY PRESIDENT: Does the House agree to the principles being accepted?

The House accepted the principles of the Bill.

The Secretary then read the title of the Bill.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I beg to move that the Bill be referred to a Select Committee consisting of the following gentlemen:

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|-----------------------------------|---------------------------|
| 1. The Deputy President. | 6. Messrs. V. Ramakrishna |
| 2. Messrs. P. Chidambaram Pillai. | Panickar. |
| 3. „ K. P. Krishna Menon. | 7. „ K. Padmanabhan. |
| 4. „ N. John Joseph. | 8. „ K. R. Elenkath. |
| 5. „ Pottayil S. Krishna | 9. „ N. E. Varughese. |
| Panickar. | |

DEPUTY PRESIDENT: Does the House agree?

The House agreed.

DEPUTY PRESIDENT: The motion is carried. The Committee will report in four months.

THE TRAVANCORE LUNACY BILL.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I rise to introduce the Travancore Lunacy Bill which has been published with a statement of objects and reasons in the Government Gazette, and I move that the Bill be read in Assembly.

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THE TRAVANCORE COURT OF WARDS BILL.

Preamble. Whereas it is expedient to make certain special provisions for the due preservation of the person and property of incapacitated persons ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Regulation may be called the Travancore Court of Wards Regulation.....

Short title, extent and commencement. (2) It extends to the whole of Travancore.
(3) It shall come into force on.....

2. The Guardians and Wards Regulation 1077 (II of 1077) shall be read subject to this enactment and to every enactment hereafter passed relating to any Court of Wards.
Guardians and Wards Regulation to be read subject to this Regulation.

1. Notwithstanding anything contained in the Travancore Majority Regulation (Regulation VII of 1099) or in any other enactment, a minor of whose property the superintendence has been or shall be assumed by any Court of Wards, before the minor has attained the age of eighteen years, shall be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.

4. In this Regulation unless there is something repugnant in the subject or context—

Definitions. "Court" "Court" means the Court of Wards.

"Ward." "Ward" means a person who has been made a ward of the Court under Section 18.

"Division Peishkar" includes any officer appointed by Our Government to perform the functions of a Division Peishkar.

"Proprietor" means a person who owns, or who has a life interest in, land either solely or as a co-sharer and shall include the Karanavan of a Marumakkathayam Tarwad

"Proprietor". and the manager of a Hindu undivided family.

CHAPTER II.

THE COURT OF WARDS.

5. A Board consisting of the Land Revenue Commissioner and two other persons nominated by Our Government from time to time shall constitute the Court of Wards.

6. The Court of Wards shall be subject to the control of Our Government, and our Government may, if they think fit revise, modify or reverse any order passed or proceedings taken under this Regulation, whether a petition is presented against such order or proceeding or not.

7. (1) The Court may exercise all or any of the powers conferred on it by this Regulation through the Division Peishkar in whose Division any part of the property of the ward may be situated or through any other person whom it may appoint for the purpose and may confer any of its powers on any such Division Peishkar or person and withdraw any powers so conferred.

(2) For the purpose of this Regulation the Division Peishkars shall be subject to the control of the Court.

CHAPTER III.

ASSUMPTION OF SUPERINTENDENCE OF PERSONS AND PROPERTY.

8. The following proprietors shall be deemed to be disqualified for the management of their property :—

Disqualification.

(a) Minors.

(b) Proprietors adjudged by a competent civil court to be of unsound mind and incapable of managing their property.

(c) Proprietors declared by Our Government to be incapable of managing their property owing to any physical or mental defect or infirmity rendering them unfit to manage their property.

9. Whenever a Division Peishkar receives information that a proprietor of land situated in his Division has died, and he has reason to believe that the heir of such proprietor is, or should be declared to be, disqualified under Section 8,—

Immediate protection of disqualified heirs.

(a) he may take such steps or make such order as he thinks proper for the temporary custody and protection of the property which he has reason to believe to belong to the heir, and

(b) if the heir be minor he may direct that the person, if any, having custody of the minor, shall produce him or cause him to be produced, at such place and time, and before such person as he appoints, and may take such order for the temporary custody and protection of the minor as he thinks proper :

Provided that female minors who ought not to be compelled to appear in public shall be produced in accordance with the manner and customs of the country.

10. All expenses incurred by a Division Peishkar acting under Section 9 shall, whether the property is afterwards taken under the superintendence of the Court or not, form a charge upon the property concerned, and shall be recoverable from the owner of such property, or the person whom the Division Peishkar shall find to be in possession of such property, as arrears of land revenue.

11. Whenever any Division Peishkar, after making such enquiry as he deems necessary, has reason to believe that any proprietor in his Division is, or should be declared to be, disqualified under Section 8, he shall submit a report to the Court setting forth all the circumstances of the case:

Report by Division Peishkar. Provided that in the case of proprietors of lands the annual value of which is less than one thousand rupees, the Division Peishkar need not report the case to the Court unless he is of opinion that the Court ought to assume the superintendence of the property.

Provided also that the Court or Our Government may call for a report in any case if deemed fit.

Explanation: The annual value shall be taken to be the full pottam assessment on the land at the last Revenue Settlement; and in case there be no such assessment the annual value shall be such as is determined by Our Government or under rules passed by Our Government.

12. (1) Before reporting to the Court under Section 11 that a proprietor should be declared to be disqualified under Section 8, the Division Peishkar shall give notice to such proprietor and afford him a reasonable opportunity to be heard and to adduce evidence.

(2) All questions as to whether the provisions of this Section have been complied with shall be decided by Our Government and such decision shall be final.

13. The Court shall consider the Division Peishkar's report, and shall report the case to Our Government with its recommendation and, pending the receipt of orders, shall have power to take such steps as it may deem necessary for the protection of the person and property of the proprietor in question.

14. Our Government, may, on receipt of the Court's recommendation, declare the proprietor to be disqualified within the intent of Clause (c) of Section 8 and Our Government may, in any case falling under Section 8, order the Court to assume the superintendence of the person or property or both of the proprietor.

15. Our Government shall not declare any proprietor to be disqualified within the intent of Clause (c) of Section 8 unless they are satisfied that it is expedient in the public interests that his property should be managed by the Court and a statement to this effect shall be inserted in the declaration made by Our Government under Section 14.

Proprietor not to be declared disqualified under section 8 (c) unless on ground of public interests

16. (1) Our Government shall not, except under Section 17, order the Court to take the property of any Marumakkathayam Tarwad or any undivided Hindu family under its superintendence unless—

Provision to meet case of undivided families and co-shares,

(a) all the Tarwad members or the co-parceners, as the case may be, are or are declared to be disqualified under Section 8, or.

(b) the proprietor is or is declared to be disqualified under Section 8 and the majority of the Tarwad members or co-parceners, as the case may be, agree in writing to such superintendence.

(2) When two or more proprietors are co-sharers, otherwise than as co-parceners in an undivided Hindu family or as members of a Marumakkathayam Tarwad, and one of such co-sharers is or is declared to be disqualified under Section 8, Our Government may order the Court to institute a suit for partition on behalf of the disqualified proprietor and to take under its superintendence the property allotted to such proprietor in the partition.

17. A proprietor may make application to Our Government to have his property placed under the superintendence of the Court, and Our Government may, on being satisfied that it is expedient in the public interests that such property should be managed by the Court, make a declaration to that effect and order the Court to assume the superintendence of such property.

Application by proprietor himself.

Explanation: In the case of a proprietor who is the Karanavan of a Marumakkathayam Tarwad or is the manager of a Hindu family, the Tarwad property or family property of which he is, or shall become entitled to be, in possession shall also be deemed to be his property for all the purposes of this Regulation.

18. (1) Whenever under Section 14 or 17 Our Government order the Court to take under its superintendence the person or property of a proprietor or both, such order of Our Government, together with any declaration made under the aforesaid Sections, shall be notified in Our Government Gazette. The notification shall specify the Division Peishkar who shall discharge the duties imposed upon a Division Peishkar by this Regulation in respect of such person or property or both as the case may be.

Notification of assumption of superintendence.

(2) Such proprietor shall be deemed to have become a ward under the Court from the date of the said order of Our Government and the superintendence of his person or property or of both shall take effect from the said date and, as to property, shall extend to all movable and immovable property belonging to him at the date of the order, or to which he shall afterwards become in any way entitled whilst he continues under such superintendence:

Provided that it shall be in the discretion of the Court to assume or refrain from assuming the superintendence of any property which the ward may acquire otherwise than by inheritance subsequent to the date of the order of Our Government under Section 14 or 17.

CHAPTER IV.

MANAGEMENT AND GUARDIANSHIP.

19. When the Court has assumed the superintendence of the property of a ward, the Division Peishkar specified in the notification under Section 18 or, if so directed by the Court, the Division Peishkar of the Division in which any part of the property is situated, shall take possession and custody of such property on behalf of the Court.

20. It shall be lawful for such Division Peishkar—

Powers of the Division Peishkar in so doing. (a) to order any person in possession of any movable property to the possession of which the ward is entitled or of any accounts or papers relating to the property of such ward to deliver up such movable property, accounts or papers;

(b) in case there is reason to believe that any movable property to the possession of which the ward is entitled or any accounts or papers relating to the property of the ward are to be found in any room, box, or receptacle within any house in the actual possession of the ward, to break open such room, box or receptacle or authorise the same to be broken open for the purpose of searching for such property, accounts or papers;

(c) to order any person who is or has been in the employ of the ward, and any person who was in the employ of the immediately preceding proprietor, to attend before him for examination; and to defray the necessary expenses of any person so attending out of the assets of the estate;

(d) to order all holders of tenures and under-tenures on the ward's property to produce their titles before him.

21. The Court may determine what sums shall be allowed for the expenses of the ward and of his family and dependents and of those who are entitled to be maintained out of the property taken possession of on behalf of the Court.

Allowance for ward and family.

Custody, residence, education and marriage of ward or minor relatives.

22. The Court may make such orders and arrangements, as to it may seem fit, in respect of the custody, residence, education and marriage—

(a) of any ward whose person is for the time being under superintendence,

(b) of any minor child, minor brother; or minor sister of such ward or minor or incapacitated *seshakaran* or co-parcener, as the case may be, of such ward who, in the opinion of the Court, is entitled to maintenance at the charge of the ward's estate,

(c) of the ward's next male heir being a minor and also so entitled to maintenance.

Appointment, etc., of managers and guardians.

23. (1) The Court may appoint managers for the property, and guardian for the person, of any ward, and may control or remove any manager or guardian so appointed :

Provided that it shall not appoint a guardian for any person who has become a ward in pursuance of an order under Section 17.

(2) Any appointment made under this Section shall terminate when the Court ceases to exercise superintendence over the person for whom a guardian, or over property for which a manager, has been appointed.

24. If no manager of the property or guardian of the person of a ward is appointed by the Court, or the office if temporarily vacant, the Division Peishkar specified in the notification under Section 18, or any other Division Peishkar whom the Court may appoint in this behalf, shall be competent, under the control of the Court, to do anything that might be done by such manager or guardian.

Division Peishkars to act if there are none.

25. (1) No person being the next legal heir of a ward or appearing to have a direct or indirect advantage in the death or continued disqualification of such ward shall be appointed guardian of such ward ;

Who may and may not be guardians.

Provided that the mother of the ward, or any person appointed guardian by the will of a person authorised to make such appointment, may be appointed guardian by the Court at its discretion.

(2) A female guardian shall be appointed for a female ward, and a male guardian for a male ward above seven years of age, unless, in any case, the Court, for special reasons, shall direct otherwise :

Provided that no guardian shall ordinarily be appointed for a female ward if she has an adult husband.

26. A guardian appointed under Section 23 shall be charged with the custody of the ward, and, subject to the control of the Court, shall make suitable provision for his maintenance and health, and, if he be a minor, for his education and for such other matters as are required by the personal law to which the ward is subject, and shall—

Duties of guardians.

(a) give such security (if any) as the Court thinks fit, for the due performance of his duty ;

(b) submit such accounts as the Court may direct ;

(c) pay the balance due from him thereon ;

(d) continue liable to account to the Court after he has ceased to be guardian for his receipt and disbursements during the period of his guardianship ;

(e) apply for the sanction of the Court to any act which may involve expense, not previously sanctioned by the Court ;

(f) be paid such allowance out of the property of the ward as the Court thinks fit.

27. Every manager appointed by Court shall have power, subject to the control of the Court, to collect the rents of land placed under his charge, as well as all other money due to the ward, and to grant receipts therefor, and may, under the orders of the Court, grant or renew such leases as may in his opinion be necessary for the good management of the property, and do all such lawful acts as may be generally or specially authorised by the Court to do for the good management of the property.

Powers of
manager.

28. Every manager appointed by the Court shall manage the property placed under his charge diligently and faithfully and shall —

(a) give such security, if any, as the Court thinks fit, duly to account for what he may receive in respect of the rents and profits of the property under his charge ;

(b) keep such accounts in such form and submit them at such times as the Court may direct ;

(c) deal with all moneys received by him in such manner as the Court may direct ;

(d) apply for the sanction of the Court to any act which may involve the property in expense not previously sanctioned by the Court ;

(e) be responsible for any loss occasioned to the property by his negligence or wilful default ;

(f) continue liable to account to the Court after he has ceased to be manager for his receipts and disbursements during the period of his managership ;

(g) be paid such allowances out of the property of the ward as the Court thinks fit.

29. Every guardian, manager or other servant of the Court, shall be deemed to be a "public servant" within the meaning of Sections 153 to 157 of the Travancore Penal Code (Regulation I of 1074) and in the definition of "legal remuneration" contained in the said Section 153, the word "Government" shall, for the purposes of this Section, be deemed to include the Court.

Employees of
Court deemed to be
public servants.

30. Unless the Court otherwise directs, all moneys received by or on behalf of the Court on account of the property of any ward, shall be employed in meeting the charges included in Class I hereinafter specified, before it is employed in meeting the charges in Classes II and III hereinafter specified, and in meeting the charges in Class II before it is employed in meeting those in Class III.

Regulation of expenditure.

CLASS I.

Charges necessary for the maintenance, residence, education, marriage and indispensable religious observances of the ward and his family and of those in respect of whom such charges have to be paid out of the property of the ward.

Charges necessary for the management and supervision of the property of the ward.

Charges on account of Government revenue and of all cesses and other public demands due in respect of such property, or any part of such property.

CLASS II.

Charges on account of rent, cesses or demands due to any superior landholder in respect of any land held on behalf of the ward.

The liquidation of debts payable by the ward out of the property taken charge of by the Court.

Expenses necessary to protect the interests of the ward in the Civil Courts or otherwise.

The maintenance in efficient condition of the estates, buildings and other immovable property and the suitable upkeep of the furniture equipage, live-stock and other movable property belonging to the ward.

CLASS III.

The payment of such charges for the religious observances of the ward and his family and of such religious, charitable and other allowances, and of such donations befitting the position of the ward's family as the Court may authorise to be paid.

The prevention and relief of distress among the ward's tenantry.

The improvement of the land and property of the ward and the benefits of the ward and his property generally.

31. Any surplus which remains after providing, so far as the Court deems fit, for the objects mentioned in Section 30, shall be applied in the purchase of other landed property or invested at interest on the security of first mortgages of immovable property situate in Travancore, provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage money, or invested in such public securities as may be specified by Our Government from time to time.

Disabilities of wards.

32. A ward shall not be competent.

(a) to transfer or create any charge on, or interest in, any part of his property which is under the superintendence of the Court, or to enter into any contract or to make any acknowledgment involving him in pecuniary liability personally or in respect of such property; but nothing in this Clause or in Section 22 shall be deemed to affect the capacity of a ward to enter into a contract of marriage: Provided that he shall not incur in connection therewith any pecuniary liability, except such as, having regard to the personal law to which he is subject and to his rank and circumstances, the Court may, in writing, declare to be reasonable;

(b) to grant valid receipts for the rents and profits arising or accruing from such property or for debts or other moneys due to the estate;

(c) to adopt or to give a written or verbal permission to adopt, without the consent of the Court;

(d) to dispose of his property by will without the consent of the Court:

Provided, firstly, that the Court shall not withhold its consent under Clause (c) or (d) if the adoption or testamentary disposition is not contrary to the personal or special law applicable to the ward, and does not appear likely to cause pecuniary embarrassment to the property, or the lower the influence or respectability of the family in public estimation:

Provided, secondly that the Court may confirm a will or an adoption made, or a permission to adopt given, without its previous consent; and

Provided, thirdly, that the provisions of Clauses (c) and (d) shall not apply to any proprietor in regard to whose property a declaration has been made under Section 17.

33. The Court may mortgage or sell the whole or any part of any property under its superintendence and may give leases or farms of the whole or any part of such property for such terms as it thinks fit, and may make remissions of rent or other dues, and may generally pass such orders and do such acts not inconsistent with the provisions of this or any other Regulation for the time being in force as it may judge to be for the advantage of the ward or for the benefit of the property.

34. The Court may order such establishments to be employed and charges to be incurred as it shall consider requisite for the care and management of the persons and properties under its superintendence, and generally for all the purposes of this Regulation, and may order that such charges shall be borne by and distributed amongst the said properties in such proportions as it deems fit.

CHAPTER V.

ASCERTAINMENT AND SETTLEMENT OF DEBTS.

35. (1) On the publication of a notification under Section 18, the Division Peishkar therein specified may, at any time with the previous sanction of Our Government, publish in our Government Gazette a notice in English and Malayalam, and in such other languages as he may consider expedient, calling upon all persons having pecuniary claims, whether immediately enforceable or not against the ward or property to notify the same in writing to the Division Peishkar within six months from the date of such notification.

(2) The notice shall also be published at such places and in such other manner as the Court may, by general or special order, direct and shall be sent by registered post or anchal to every person who is known to the Division Peishkar as having a pecuniary claim against the ward or his property and of whose address the Division Peishkar is credibly informed.

(3) Our Government may, at any stage of the proceeding under Sections 35, 36 and 38, invest any person either by name or in virtue of his office with the powers of a Division Peishkar for any or all of the purposes of these Sections.

Explanation.—A claim shall be deemed to be pecuniary for the purpose this Section and Sections 36 and 39 notwithstanding that a suit for its enforcement or a reference of such claim to arbitration is pending or that a decree or award has been passed establishing the same.

36. (1) Every such claimant shall, within the period prescribed by Section 35, notify to the Division Peishkar in writing his claim with particulars thereof:

Claimants to furnish full particulars and documents.

Provided that any claim presented after the expiration of such period within a further period of six months may be admitted if the claimant satisfies the Division Peishkar that he had sufficient cause for not notifying the claim at an earlier date.

(2) Every document (including entries in books of account) in the possession of or under the control of the claimant on which he founds his claim, shall be produced before the Division Peishkar with the statement of claim or within such time after the preferring of the claim as may be allowed by the Division Peishkar in that behalf:

Provided that if the claim relates to an amount secured by a decree or award, it shall be sufficient for the claimant to produce before the Division Peishkar a certified copy of the decree and a certificate from the Court which passed or is executing the same declaring the amount recoverable thereunder or a true copy of the award and a statement of the sum recoverable thereunder as the case may be and if the claim is pending adjudication in any court or has been referred to arbitration, it shall be sufficient for the claimant to produce a certified copy of the plaint or a true copy of the reference to arbitration as the case may be.

(3) It shall be lawful for the Division Peishkar to require the production by any claimant of such of the documents in his possession or power relating to his claim other than the documents, if any, produced under sub-section (2) as the Division Peishkar may consider necessary.

(4) Unless the Division Peishkar shall otherwise direct, every document produced under this Section, shall be accompanied by a true copy thereof. The Division Peishkar shall mark the original document for the purpose of identification and, after examining and comparing the copy with it, shall retain the copy and return the original to the claimant.

37. Nothing contained in Sections 35 and 36 shall apply to any pecuniary claim of Our Government or any local authority or to claims for maintenance or for wages or salaries due to servants.

Pecuniary claim of Government, etc., not affected.

38. The Division Peishkar shall after making such enquiry as he may deem fit, decide which claims notified or admitted under Section 36 are to be allowed in whole or in part, and which are to be disallowed, and on his decision being confirmed by the Court, shall give written notice of the same to the claimants:

Claims admitted and disallowed.

Provided that nothing herein contained shall be construed as precluding any claimant from continuing or instituting proceedings in any Civil Court in respect of any claim whether such claim be allowed or disallowed by the Court in whole or in part.

39. Every pecuniary claim against the ward or his property which has not been duly notified to, or admitted by, the Division Peishkar under Section 36 shall, notwithstanding any law, contract, decree or award to the contrary, cease to carry interest from the expiration of the period prescribed by Section 35, and shall not be paid until after the discharge or satisfaction of the claims notified or admitted under Section 36.

Claims not notified cease to carry interest, etc.

40. No document in the possession or under the control of the claimant which should have been, but has not been, produced in accordance with the requirements of Section 36, shall be admissible in evidence against the ward or his representative in any suit brought by or against the claimant, or any person claiming under him, unless it be proved to the satisfaction of the Civil Court that it was not within his power to produce such documents before the Division Peishkar.

Inadmissibility in evidence of documents not produced.

41. (1) When any property of a ward is in the possession of a mortgagee or any person claiming under the mortgagee Our Government may on being satisfied that it is expedient in the public interests that the estate should be preserved and that such incumbrancer should deliver up possession of the mortgaged property, make a declaration to that effect, and direct the Court to take possession thereof; the Court shall thereupon by an order in writing require such incumbrancer to deliver up possession of the same to the manager at the end of the then current revenue year.

When mortgagee in possession may be dispossessed

(2) If such incumbrancer refuses or neglects to obey such order, the Division Peishkar may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

(3) If in the instrument of mortgage under which the incumbrancer is in possession of the property no rate of interest is specified, the Division Peishkar shall, in cases where the mortgage debt has been notified to or admitted by him, offer to the incumbrancer the rate of interest which appears to him to be reasonable; and pass an order fixing the rate accordingly. Copy of the order shall be served upon the incumbrancer in the manner prescribed by the Code of Civil Procedure for service of summons upon a defendant. If the incumbrancer be dissatisfied with the rate of interest so fixed, he may within three months from the date of service upon him of such order, institute a suit against the ward in the District Court within whose jurisdiction the property mortgaged or any portion thereof is situate, and the said Court shall, if the mortgaged debt has been notified or admitted as aforesaid, pass a declaratory decree fixing such rate of interest as to it may seem reasonable. If no such suit be instituted within the said period, the incumbrancer shall be deemed to have agreed to the rate fixed by the Division Peishkar.

(4) If an incumbrancer is dispossessed under this Section, the money due to him under the instrument of mortgage at the date of such dispossession together with subsequent interest on the unliquidated principal of the mortgage debt at the rate stipulated in the said instrument, and in the absence of such stipulation at the rate determined as hereinbefore provided, shall, subject to the provisions of Section 39, and subject to the charges specified in Clauses I and II in Section 30, excepting the liquidation of debts payable by the ward, and the provisions with reference to the upkeep of the furniture, equipage, live-stock and other movable property belonging to the ward, be recoverable, together with any money which he may be legally entitled to add to the principal money on the security of the property mortgaged and of the rents and profits arising or accruing therefrom subsequent to the date of such dispossession, in the same manner as if he were a simple mortgagee under the said instrument of such property and of such rents and profits.

(5) The Division Peishkar shall, as soon as conveniently may be, after the expiration of the revenue year commencing with the date of such dispossession and of every successive revenue year, declare, subject to the approval of the Court, the gross annual rents and profits realised from such property, the several heads of the expenditure and the balance, and such declaration shall be conclusive evidence of the statements therein contained. A copy of such declaration shall be furnished to the dispossessed incumbrancer free of charge.

42. (1) When any property of a ward is in the possession of any person claiming to hold under a lease granted by the ward and dated within the three years immediately preceding the commencement of the superintendence or of any person claiming under such lease, the Division Peishkar may inquire into the sufficiency of the consideration for which the lease was granted; and if such consideration appears to him inadequate, he may, with the previous sanction of the Court, give notice in writing that the lease shall determine at the end of the then current revenue year unless the lessee or any one claiming under him pays or agrees to pay such additional consideration as may be mentioned in such notice within a date therein fixed. If within such date such person does not pay or enter into an agreement to pay the additional consideration demanded or such other consideration as the Division Peishkar be willing to accept, the lease shall determine at the end of the then current revenue year:

Provided that such person may, if dissatisfied with the said notice of the Division Peishkar, institute a suit against the ward within three months from the date of service of such notice in a District Court within whose jurisdiction the property comprised in the lease or any portion thereof is situate for determining whether the consideration for the lease was adequate, and if not whether the additional consideration demanded by the Division Peishkar or what other amount is reasonable

(2) If the said District Court be satisfied that the lease was granted for adequate consideration and it is not shown to be otherwise invalid, it shall pass a decree establishing the validity of the lease.

(3) If the District Court holds the consideration for the lease to be inadequate, it shall determine the amount of additional consideration to be paid by the lessee.

(4) If no such suit be instituted or if on the institution of such suit the lessee does not within one month from the date of the decree therein pay or enter into an agreement to pay the additional consideration, determined by the District Court, the Division Peishkar may without resorting to a Civil Court enter upon the property and summarily evict therefrom such person and any other person obstructing or resisting on his behalf.

CHAPTER VI. SUITS.

43. No declaration made by Our Government under Section 14 or Section 17 and no act done in the exercise of any discretionary power conferred by this Regulation shall be questioned in any Civil Court.

44. (1) No suit relating to the person or property of any ward shall be instituted in any Civil Court until the expiration of two months after notice in writing has been delivered to or left at the office of the Division Peishkar specified in the notification under Section 18,

(2) Such notice shall state the name and place of abode of the intending plaintiff, the cause of action and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left:

Provided that notice under this section shall not be required in the case of any suit the period of limitation for which will expire within three months from the date of the notification under Section 18.

45. In all suits or proceedings in any Civil or Revenue Court the ward shall sue and be sued in his own name, and the manager of his property appointed under Section 23 or, if there is no manager, the officer competent to act as manager under Section 24 shall represent him, as next friend or guardian *ad litem* as the case may be.

46. If in any such suit or proceedings any Civil or Revenue Court shall decree any costs against the manager (or other officer competent to act as manager under Section 24) the Court of Wards shall cause such costs to be paid out of any property of the ward which, for the time being, may be in its hands.

47. No suit shall be brought on behalf of any ward by the manager (or other officer competent to act as manager under Section 24) unless authorised by some particular or general order of the Court.

Provided that a manager (or other officer as aforesaid) may file a plaint in order to prevent a suit from being barred by the law of limitation, but such suit shall not be further proceeded with until the consent of the Court has been obtained.

48. (1) When any question arises as between two or more wards of such a nature that an adjudication upon it by a Civil Court is expedient, it shall be lawful for the Court of Wards, acting through the Division Peishkar of the Division in which a case might have been stated for the opinion of the Civil Court with regard to such matter under the provisions of the Code of Civil Procedure, to file in the Civil Court having jurisdiction, a statement containing the point or points for determination.

(2) When such statement has been filed the Civil Court shall appoint a guardian *ad litem* for each ward having a separate interest, and such guardians shall thereupon conduct the case subject to the general control of the Court of Wards.

(3) The Civil Court may, if it thinks fit, amend the case so stated and shall then proceed to hear and dispose of the case in the manner provided in the Code of Civil Procedure for the hearing and disposal of cases stated for opinion under that Code.

CHAPTER VII.

RELEASE OF PERSONS AND PROPERTY FROM SUPERINTENDENCE.

49. The Court may, (with the previous sanction of Our Government in all cases where superintendence has been assumed in pursuance of orders under Section 14), at any time release from its superintendence the person or property of a ward or both and shall, save as provided in Section 52, release from superintendence—

(a) the person and property of a ward disqualified under clause (a) of Section 8 as soon as he ceases to be a minor;

(b) the person and property of a ward disqualified under clause (b) of Section 8 as soon as it is found by a competent Civil Court that the disability has ceased;

(c) the person and property of a proprietor declared to be disqualified under clause (c) of Section 8 as soon as Our Government revokes its declaration that such proprietor is disqualified.

50. (1) The Court may, with the previous sanction of Our Government, at any time within two years from the date of the notification published under Section 18, release from its superintendence on a day to be notified, the property of a person who has been made a ward of the Court in pursuance of an order under Section 17 without liquidating any of his debts and liabilities, or after liquidating some of the debts and liabilities, when the Court is satisfied that it is impracticable to liquidate within a reasonable time, all the debts and liabilities or such of them as have not been liquidated and in either case the legal incapacity of such ward shall cease on the date so notified.

(2) Whenever an incumbrancer is dispossessed under Section 41 and his debt remains unliquidated at the time the Court releases from its superintendence the property of such ward under sub-section (1) the Division Peishkar shall replace the incumbrancer in possession.

(3) Whenever the property of a person is released under sub-section (1) from the superintendence of the Court, the provisions of Sections 39 and 40 shall not apply to any of the debts and liabilities of the ward remaining unliquidated at the time when his property is so released.

(4) In computing the period of limitation applicable to a suit brought or application made against such person or his legal representative after the Court has released his property under sub-section (1) the time during which the superintendence of the Court continued shall be excluded.

51. The Court may, with the previous sanction of Our Government, replace any proprietor, made a ward of the Court in pursuance of an order under Section 17, in the management of his estate on a day to be notified, if the debts and liabilities binding on his estate have been discharged, and the Court is satisfied that he will thereafter be competent to take charge of his

estate and administer his own affairs and his legal incapacity shall cease on such date.

52. When a ward dies or ceases to be disqualified before the debts and liabilities binding on his estate have been discharged, the Court may, with the previous sanction of Our Government, retain the property under its superintendence until the debts and liabilities are discharged or for any shorter period, and when for the purpose of discharging such debts and liabilities the Court has raised money on condition that it should retain the superintendence of the property until the money so raised be repaid, the Court shall not without the consent of the lender or his representatives withdraw from superintendence until the money so raised has been repaid :

Provided that, after the death of the ward, the Court shall not retain charge on account of any debt or liability which has been declared by a Civil Court not to be binding on the representatives of the deceased ward.

53. If the Court retains the superintendence under the provisions of the last preceding Section, the person who has succeeded to the property, or the person who has ceased to be disqualified shall in so far as the property in question is concerned be deemed to be a ward of the Court for the purposes of clauses (a) and (b) of Section 32.

54. (1) When the Court decides to release from its superintendence the person and property of a minor it may, before such release, by an order in writing, appoint any person to be the guardian of the person or property or both of such minor.

(2) Such appointment shall take effect from the date of such release.

(3) In appointing a guardian under this Section the Court shall be guided by the provisions of Section 15 of the Guardians and Wards Regulation 1077 (Regulation II of 1077).

(4) Every such guardian shall have and be subject to the same rights, duties and liabilities as if he had been appointed under the Guardians and Wards Regulation 1077 (Regulation II of 1077).

55. Any expense incurred by the Court on account of any property under its charge, and not defrayed from such property, during the Court's superintendence may after the release of such property be recovered as if it were an arrear of land revenue from any person into whose possession such property or any part thereof may have passed :

Provided that the sum so recovered from any such person shall not be greater than the value of any such property, which so passed into the possession of such person.

56. Whenever, on the death of any ward, the succession to his property or any part thereof is disputed, the Court may either direct that such property or part thereof be made over to any person claiming the property, or may retain the superintendence of the property

until a claimant has established his title to the same in a competent Civil Court, or institute a suit of interpleader against all claimants.

Notification of release from superintendence.

57. Whenever the Court releases any person or property from its superintendence the fact of such release shall be notified in Our Government Gazette.

CHAPTER VIII.

MISCELLANEOUS.

58. If a ward is the hereditary trustee or manager of a temple, mosque or other religious establishment or endowment, the Court may make such arrangements as it thinks fit for the discharge, during the wardship, of the ward's duties as trustee or manager, provided that for the direct and personal management of the religious affairs of any such institution, establishment or endowment, the Court shall appoint suitable persons other than officers of Our Government and the Court shall as far as possible restrict its superintendence to the preservation of the property belonging to the institution, establishment or endowment.

59. In holding any inquiry under this Regulation the Division Peishkar or other persons authorised to hold such inquiry shall have all the powers conferred on Revenue Officers by Regulation V of 1063 (Revenue Summons Regulation) and the provisions of that Regulation shall apply *Mutatis mutandis*.

60. No immovable property under the superintendence of the Court shall be liable to sale on account of arrears of land revenue accruing while such estate is under the superintendence of the Court.

Provided that all such arrears of revenue shall be the first charge upon the sale-proceeds of any such property which may be sold for any other causes than for arrears of revenue.

61. The Court, may, with the previous sanction of Our Government, make rules consistend with this Regulation—

(a) regulating the management of property under the superintendence of the Court; and

(b) generally for the guidance of all persons in all proceedings under this Regulation and for carrying out the provisions of this Regulation.

62. The rents and all other moneys whatsoever which the Court or the Division Peishkar or a manager appointed by the Court may collect on behalf of the ward under the provisions of this Regulation may be recovered from the party concerned as if they were arrears of land revenue.

63. Every manager or other servant of the Court entrusted with the receipt, custody or control of moneys or securities for money on behalf of the Court or with the management of any property under its superintendence shall be deemed to be a public accountant within the meaning of Regulation III of 1080 (Public Accountants Regulation) and shall be liable to be dealt with under that Regulation.

Servants of a Court to be deemed public accountants.

CHAPTER IX.

PENALTIES.

64. Whoever, without the previous consent of the Court, abets the marriage of any of the persons specified in clauses (a), (b) and (c) of Section 22 shall be liable, on conviction before a court not below that of a Magistrate of the First Class, to a fine not exceeding Rs. 2,000 or to imprisonment for a term not exceeding six months or to both.

Abetting unsanctioned marriage of wards, etc.

STATEMENT OF OBJECTS AND REASONS.

The object of this measure is to provide for the protection of the person and property of incapacitated persons such as, *e. g.*, minors and persons of unsound mind. The Bill proposes a State agency called the "Court of wards" to take charge of the person and property of the incapacitated persons, the "wards", for the purpose of looking after the person and the proper management of the property. The Court proposed is a Board consisting of the Land Revenue Commissioner and two other persons nominated by Government (see Clause 5) and it exercises its functions through the Division Peishkar (see Clauses 7 and 9 to 12) and is subject to the control of Government (see Clauses 6, 13 and 14). The Court though thus a statutory body and though it is proposed to be given special powers and duties and invested with special methods of action, is in essence a guardian of the person and property of the wards and the rights and liabilities of the Court are very similar to those of other guardians. It is not intended that the Court should take over the person and property of every incapacitated person. The intervention of the Court is generally intended only in the case of persons of some social position and importance and possessed of considerable property, particularly, where public interests also would be a consideration for the superintendence by the Court (see Clause 15). On grounds of public interests too, Government are given power to declare persons to be incapable of managing their property (see Clauses 8 (c) and 15) and, again on grounds of public interest, the property of even persons not incapacitated may be taken over by the Court as when the proprietor of, say, a heavily encumbered estate applies for the benefit of the superintendence by the Court, (see Clause 17). Special provisions are made in the Bill for the guardianship of the wards and the management of their estate (see Chapter IV) as also for the ascertainment and settlement of the debts due from the wards (see Chapter V). When

the necessity for the superintendence by the Court is over, as also when it ceases to be useful, the Court may withdraw from the superintendence (see Chapter VII). It is also provided that the rents and other moneys due to wards may be recovered under the Revenue Recovery Processes (see Clause 62) and that the servants of the Court shall be liable to be dealt with as public accountants under the Public Accountants Regulation, III of 1080 (see Clause 63).

2. There are statutes in British India and in Cochin providing for Courts of Wards. This Bill is drawn closely on the lines of the Madras Court of Wards Act, 1902 and the Cochin Court of Wards Regulation XIII of 1097.